

SERVICE DATE – SEPTEMBER 21, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 218X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN
KOOTENAI COUNTY, ID

Decided: September 20, 2005

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon a 5.25-mile line of railroad known as the Coeur d’Alene Industrial Lead from milepost 2.25 near Feeley Spur to milepost 7.50 near Gibbs, in Kootenai County, ID. Notice of the exemption was served and published in the Federal Register on December 16, 2004 (69 FR 75379-80). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on January 15, 2005, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Pan American Railway, Inc. (PARI) to purchase the entire line.¹ However, on March 10, 2005, PARI notified the Board that it had decided not to go forward with the OFA, and therefore the OFA process was terminated.² On March 14, 2005, the Board issued a NITU

¹ PARI simultaneously requested that UP provide it with the information prescribed at 49 CFR 1152.27(a), including the minimum purchase price required to acquire the line, UP’s most recent reports on the physical condition of the line, UP’s estimate of the net liquidation of the line, and supporting data. Also, PARI requested the Board to toll the time period for submitting its OFA until 10 days after UP provides the necessary information. By decision served January 5, 2005, UP was directed to provide PARI with the requested information to enable PARI to file an OFA, and the deadline for PARI to file its OFA was extended until 10 days after PARI’s receipt of the required information, and the effective date of the exemption was extended until 20 days after PARI’s receipt of the required information.

² On December 29, 2004, the North Idaho Centennial Trail Foundation (NICTF) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and for a public use condition under 49 U.S.C. 10905, to negotiate with UP for acquisition of the right-of-way for use as a recreation trail. By decision served on January 14, 2005, the Board held both requests in abeyance pending completion of the OFA process, and, upon reconsideration of the abandonment of the line, imposed a historic preservation and an environmental condition.

in this proceeding authorizing NICTF to negotiate an interim trail use/rail banking agreement with UP until September 10, 2005.³

On September 8, 2005, NICTF filed a request for an extension of the negotiating period for an additional 12 months. NICTF states that, although substantial and ongoing discussions have taken place, and progress has been made, the parties have been unable to reach an interim trail use/rail banking agreement. On September 15, 2005, UP advised that it is agreeable to an extension of 365 days.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiation, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiation period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 365 days from September 10, 2005, until September 10, 2006.⁴

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NICTF's request for an extension of the NITU negotiation period is granted.
2. The negotiation period under the NITU is extended to September 10, 2006.

³ The March 14, 2005 decision also imposed a 180-day public use condition that expired on September 10, 2005.

⁴ Although the request exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company–Abandonment Exemption–in Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996); Southern Pacific Transportation Company–Abandonment Exemption–Wendel-Alturas Line in Modock and Lassen Counties, CA, Docket No. AB-12 (Sub-No. 184X) (STB served Sept. 1, 2005).

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary